IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION No.14608 of 2004

Between:

1 Md.Fasiuddin Quraishi, S/o.Md.Ghouse,
R/o.8-2-603/13/3/N/A, Road No.10 Banjarahills,
Hyderabad.
2 Mirza Dilawar Baig, S/o.Mohd. Khusheed Baig,
R/o.8-2-603/B/33/A/7, Road No.10, Banjarahills,
Hyderabad.

..... PETITIONERS

AND

1 The Municipal Corp. of Hyderabad, rep.by its Commissioner,

Tankbund, Hyderabad.
2 The Dy.commissioner, M.C.H.Circle-V, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or direction preferably writ of mandamus declaring the action of the respondents in insisting the petitioners for production of TSLR Certificates for entertaining the applications and granting permissions for making constructions / making additions to the existing houses in respect of petitioners properties bearing H.NOs. 8-2-603/13/3/N/A and 8-2-603/B/33/A/7 situated at Road No.10 Banjara Hills, Hyderabad, as illegal, arbitrary without authority, and violative of principles of natural justice and consequently direct the respondents to entertain and consider the applications of the petitioners for grant of permissions without insisting for production of TSLR Certificates.

For the Petitioner: MR.KOWTURU VINAYA KUMAR, Advocate

For the Respondent Nos.1 and 2: SMT.G.JYOTHI KIRAN, S.C. for Municipal Corporation of Hyderabad

The Court made the following:

ORDER:

The writ petition is filed by the petitioners seeking a declaration that the action of the respondent-Corporation in insisting for production of Town Survey Land Register Certificate for entertaining applications under Section 428 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') as illegal and arbitrary.

The petitioners claim to be the owners of the House bearing Nos.8-2-603/13/3/N/A and 8-2-603/B/33/A/7 situated at Road No.10, Banjara Hills, Hyderabad. They applied for permission under Section 428 and 433 of the Act proposing to demolish the old structures, as it is dilapidated condition, and construct a new building in the said premises. The application was rejected by HMC officials and they insisted for production of TSLR Certificate.

At the interlocutory stage, with the consent of the learned counsel for the parties, the Writ Petition itself was heard finally and is being disposed of.

The learned counsel for the petitioners submits that under the provisions of the Act the MCH cannot insist upon the production of TSLR. He also placed reliance on the judgment of a learned single Judge in HYDERABAD POTTERIES (P) LTD. v. DISTRICT COLLECTOR, which was affirmed by a Division Bench in W.A.No.1096 of 2001 by judgment dt.24.12.2001.

Ms. G. Jyothi Kiran, the learned Standing Counsel appearing for the MCH places reliance on the judgment of the learned single Judge in HYDERABAD POTTERIES CASE (supra) and submits that though the application filed for building permit cannot be rejected solely on the ground of TSLR, it will always be open for the Commissioner of MCH to reject a permit on other grounds, including the ground non-production of TSLR.

The question raised is no more *res integra* insofar as the State of Andhra Pradesh is concerned by reason of the judgment of the learned single Judge, which is affirmed by the Division Bench in HYDERABAD POTTERIES' CASE referred to above. In HYDERABAD POTTERIES CASE (supra), the application of the Hyderabad Potteries for construction of stilt + 5 floors was negatived by the Corporation on the ground that the entries in Town Survey Land Register (TSLR) are not in relation to the land owned by Hyderabad Potteries. The learned single Judge after elaborately considering the relevant provisions of the Act and Bye-laws and also the Government Order in G.O.Ms.No.582, Municipal Administration dt.21.5.1993 constituting a committee for examining the building plans for group

housing observed that the application for grant of permission cannot be rejected solely on the basis of TSLR entries and that though the Commissioner is not entitled to decide the disputed questions of title or ownership, he can always examine to find out the *prima facie* title and lawful possession of the applicant. The relevant portion of the judgment reads as under.

> ....The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector(s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more.

On appeal by the Government, the Division Bench in W.A.No.1096 of 2001 observed:

> ....Should it be noticed that the Commissioner while acting under Section 429(1) (aa) of the Hyderabad Municipal Corporations Act, 1955 read with relevant Building Bye-laws etc., acts as a statutory authority. It is well settled that when a statutory authority is required to make a decision on relevant materials and facts, it is not legally permissible for such authority to base its decision only on one piece of relevant material and to exclude other relevant material. The learned Judge has pointed out that in the decision making many relevant materials such as the proceedings taken by the Statutory authorities under the ULC Act, which attained finality and sale deeds, are not taken into consideration in the decision making. The learned Judge has also pointed out that the so called TSLR entries on the basis of which the application was rejected do not form part of the record placed before the Court. Therefore, looking from any angle, no exception can be taken to the direction issued by the learned Judge to the Commissioner to decide the application de-novo having regard to all the relevant materials and the plea raised by the Joint Collector. No ground is made out to interfere with the order of the learned Judge.

In view of the judgments referred to hereinabove, the impugned action insofar as it requires the petitioner to produce TSLR Certificate is concerned, it runs contrary to the law declared by this Court.

Accordingly, the writ petition is allowed as indicated above and it is declared that the Municipal Corporation is not entitled to reject the application for building permission only on the ground that the petitioner did not produce TSLR Certificate. There shall be no order as to costs.

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(**V.V.S.RAO, J**)

Date: 1st September, 2004.

YS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on the Wednesday the First day of September, Two thousand and Four only.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner,

Municipal Corporation of Hyderabad,

Tank Bunk, Hyderabad.

2. The Deputy Commissioner,

Municipal Corporation of Hyderabad,

Circle-V, Hyderabad.

3. Two CD copies.